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Attorney for Plaintiff  
WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	Civ. No. CV03 00385 SOM-LEK
	)	(Copyright)
Plaintiff,	)	
	)	<b>PLAINTIFF WAYNE BERRY'S</b>
vs.	)	<b>FIRST PROPOSED SPECIAL</b>
	)	<b>VERDICT FORM; CERTIFICATE</b>
HAWAIIAN EXPRESS SERVICE,	)	<b>OF SERVICE</b>
INC., a California corporation; et al.	)	
	)	
	)	
	)	
	)	
	)	DATE: January 20, 2006
	)	TIME: 2:00 P.M.
	)	JUDGE: Honorable Susan Mollway
	)	
	)	TRIAL DATE: January 24, 2006
	)	
Defendants.	)	
	)	
	)	
_____	)	

**PLAINTIFF WAYNE BERRY'S PROPOSED  
SPECIAL VERDICT FORM**

Respectfully submitted herewith are Plaintiff's First Proposed Special  
Verdict Form.

DATED: Honolulu, Hawai'i, January 10, 2006.

/s/ Timothy J. Hogan  
TIMOTHY J. HOGAN  
Attorney for Plaintiff WAYNE BERRY

Wayne Berry v. Hawaiian Express Service, Inc., CV 03-00385 SOM/LEK

**SPECIAL VERDICT FORM**

1. Is Wayne Berry entitled to actual damages from defendant Fleming for its unauthorized use of Mr. Berry's software?

Yes\_\_\_\_ No\_\_\_\_

If you answered "YES" to Question Number 1, then answer Question Number 2. If you answered "NO" to Question Number 1, proceed to Question Number 3.

2. State the amount of actual damages to which Mr. Berry is entitled from Fleming for its unauthorized use of Mr. Berry's software?

\_\_\_\_\_

3. State the amount of Fleming's gross revenue that was earned from April 1, 2003 to June 1, 2003.

\_\_\_\_\_

4. State the amount of Fleming's gross revenue earned from April 1, 2003 to June 1, 2003 that was not attributable to the use of Mr. Berry's copyrighted work.

\_\_\_\_\_

5. Is Wayne Berry entitled to actual damages from former Fleming Employee Defendant Mark Dillon for his unauthorized use of Mr. Berry's software?

Yes\_\_\_\_ No\_\_\_\_

If you answered "YES" to Question Number 5, then answer Question Number 6. If you answered "NO" to Question Number 5, proceed to Question Number 8.

6. State the amount of actual damages to which Mr. Berry is entitled from Mark Dillon for his unauthorized use of Mr. Berry's software?

\_\_\_\_\_

7. Is Fleming vicariously liable for Mark Dillon's unauthorized use of Mr. Berry's software?

Yes\_\_\_\_ No\_\_\_\_

8. Is Wayne Berry entitled to actual damages from former Fleming Employee Defendant Teresa Noa for her unauthorized use of Mr. Berry's software?

Yes\_\_\_\_ No\_\_\_\_

If you answered "YES" to Question Number 8, then answer Question Number 9. If you answered "NO" to Question Number 8, proceed to Question Number 11.

9. State the amount of actual damages to which Mr. Berry is entitled from Teresa Noa for her unauthorized use of Mr. Berry's software?

\_\_\_\_\_

10. Is Fleming vicariously liable for Teresa Noa's unauthorized use of Mr. Berry's software?

Yes\_\_\_\_ No\_\_\_\_

11. Is Wayne Berry entitled to actual damages from former Fleming

Employee Defendant Justin Fukumoto for his unauthorized use of Mr. Berry's software?

Yes\_\_\_\_ No\_\_\_\_

If you answered "YES" to Question Number 11, then answer Question Number 12. If you answered "NO" to Question Number 11, proceed to Question Number 14.

12. State the amount of actual damages to which Mr. Berry is entitled from Justin Fukumoto for his unauthorized use of Mr. Berry's software?

\_\_\_\_\_

13. Is Fleming vicariously liable for Justin Fukumoto's unauthorized use of Mr. Berry's software?

Yes\_\_\_\_ No\_\_\_\_

14. Is Wayne Berry entitled to actual damages from former Fleming Employee Defendant Jacqueline Rio for her unauthorized use of Mr. Berry's software?

Yes\_\_\_\_ No\_\_\_\_

If you answered "YES" to Question Number 14, then answer Question Number 15. If you answered "NO" to Question Number 14, proceed to Question Number 17.

15. State the amount of actual damages to which Mr. Berry is entitled from Jacqueline Rio for her unauthorized use of Mr. Berry's software?

\_\_\_\_\_

16. Is Fleming vicariously liable for Jacqueline Rio's unauthorized use of Mr. Berry's software?

Yes\_\_\_\_\_ No\_\_\_\_\_

17. Is Wayne Berry entitled to actual damages from former Fleming Employee Defendant Sonia Purdy for her unauthorized use of Mr. Berry's software?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered "YES" to Question Number 17, then answer Question Number 18. If you answered "NO" to Question Number 17, proceed to Question Number 20.

18. State the amount of actual damages that Mr. Berry is entitled to from Sonia Purdy for her unauthorized use of Mr. Berry's software?

\_\_\_\_\_

19. Is Fleming vicariously liable for Sonia Purdy's unauthorized use of Mr. Berry's software?

Yes\_\_\_\_\_ No\_\_\_\_\_

20. Is Wayne Berry entitled to actual damages from former Fleming Employee Defendant Melvin Ponce for his unauthorized use of Mr. Berry's software?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered "YES" to Question Number 20, then answer Question Number 21. If you answered "NO" to Question Number 20, proceed to Question Number 23.

21. State the amount of actual damages to which Mr. Berry is entitled from Melvin Ponce for his unauthorized use of Mr. Berry's software?

\_\_\_\_\_

22. Is Fleming vicariously liable for Melvin Ponce's unauthorized use of Mr. Berry's software?

Yes\_\_\_\_ No\_\_\_\_

23. Is Wayne Berry entitled to actual damages from former Fleming Employee Defendant Alfreda Waiolama for her unauthorized use of Mr. Berry's software?

Yes\_\_\_\_ No\_\_\_\_

If you answered "YES" to Question Number 23, then answer Question Number 24. If you answered "NO" to Question Number 23, proceed to Question Number 26.

24. State the amount of actual damages to which Mr. Berry is entitled from Alfreda Waiolama for her unauthorized use of Mr. Berry's software?

\_\_\_\_\_

25. Is Fleming vicariously liable for defendant Alfreda Waiolama's unauthorized use of Mr. Berry's software?

Yes\_\_\_\_ No\_\_\_\_

26. Did HAWAIIAN EXPRESS SERVICE, INC. use Mr. Berry's software without his permission?

Yes\_\_\_\_ No\_\_\_\_

If you answered "YES" to Question Number 26 then answer Question Number 27. If you answered "NO" to Question Number 26, proceed to Question

Number 29.

27. Is Fleming vicariously liable for HAWAIIAN EXPRESS SERVICE, INC.'s unauthorized use of Mr. Berry's software?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered "YES" to Question Number 27, then answer Question Number 28. If you answered "NO" to Question Number 27 proceed to Question Number 29.

28. State the amount of damages for which Fleming is vicariously liable as the result of Defendant HAWAIIAN EXPRESS SERVICE, INC.'s unauthorized use of Mr. Berry's software.

\_\_\_\_\_

29. Did H.E.S. TRANSPORTATION SERVICES, INC. use Mr. Berry's software without his permission?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered "YES" to Question Number 29, then answer Question Number 30. If you answered "NO" to Question Number 29 proceed to Question Number 32.

30. Is Fleming vicariously liable for H.E.S. TRANSPORTATION SERVICES, INC.'s unauthorized use of Mr. Berry's software?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered "YES" to Question Number 30, then answer Question Number 31. If you answered "NO" to Question Number 30 proceed to Question Number 32.



31. State the amount of damages for which Fleming is vicariously liable as the result of Defendant H.E.S. TRANSPORTATION SERVICES, INC. 's unauthorized use of Mr. Berry's software.

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32. Did CALIFORNIA PACIFIC CONSOLIDATORS, INC use Mr. Berry's software without his permission?

Yes\_\_\_\_ No\_\_\_\_

If you answered "YES" to Question Number 32, then answer Question Number 33. If you answered "NO" to Question Number 32, proceed to Question Number 35.

33. Is Fleming vicariously liable for CALIFORNIA PACIFIC CONSOLIDATORS, INC. 's unauthorized use of Mr. Berry's software?

Yes\_\_\_\_ No\_\_\_\_

If you answered "YES" to Question Number 33, then answer Question Number 34. If you answered "NO" to Question Number 33 proceed to Question Number 35.

34. State the amount of damages for which Fleming is vicariously liable as the result of Defendant CALIFORNIA PACIFIC CONSOLIDATORS, INC 's unauthorized use of Mr. Berry's software.

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35. Did JEFFREY P. GRAHAM use Mr. Berry's software without his permission?

Yes\_\_\_\_ No\_\_\_\_

If you answered “YES” to Question Number 35, then answer Question Number 36. If you answered “NO” to Question Number 35, proceed to Question Number 38.

36. Is Fleming vicariously liable for JEFFREY P. GRAHAM ’s unauthorized use of Mr. Berry’s software?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered “YES” to Question Number 36, then answer Question Number 37. If you answered “NO” to Question Number 36, proceed to Question Number 38.

37. State the amount of damages for which Fleming is vicariously liable as the result of Defendant JEFFREY P. GRAHAM unauthorized use of Mr. Berry’s software?

\_\_\_\_\_

38. Did PETER SCHAUL use Mr. Berry’s software without his permission?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered “YES” to Question Number 38, then answer Question Number 39. If you answered “NO” to Question Number 38, proceed to Question Number 41.

39. Is Fleming vicariously liable for PETER SCHAUL ’s unauthorized use of Mr. Berry’s software?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered “YES” to Question Number 39, then answer Question Number 40. If you answered “NO” to Question Number 39, proceed to Question Number 41.

40. State the amount of damages for which Fleming is vicariously liable as the result of Defendant PETER SCHAUL 's unauthorized use of Mr. Berry's software?

\_\_\_\_\_

41. Did JESSIE GONZALES used Mr. Berry's software without his permission?

Yes\_\_\_\_ No\_\_\_\_

If you answered "YES" to Question Number 41, then answer Question Number 42. If you answered "NO" to Question Number 41, proceed to Question Number 44.

42. Is Fleming vicariously liable for JESSIE GONZALES 's unauthorized use of Mr. Berry's software?

Yes\_\_\_\_ No\_\_\_\_

If you answered "YES" to Question Number 42, then answer Question Number 43. If you answered "NO" to Question Number 42, proceed to Question Number 44.

43. State the amount of damages for which Fleming is vicariously liable as the result of Defendant JESSIE GONZALES' unauthorized use of Mr. Berry's software.

\_\_\_\_\_

44. Did LUIZ RODRIGUES use Mr. Berry's software without his permission?

Yes\_\_\_\_ No\_\_\_\_

If you answered "YES" to Question Number 44, then answer Question

Number 45. If you answered “NO” to Question Number 44, proceed to Question Number 47.

45. Is Fleming vicariously liable for LUIZ RODRIGUES ’s unauthorized use of Mr. Berry’s software?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered “YES” to Question Number 45, then answer Question Number 46. If you answered “NO” to Question Number 45, proceed to Question Number 47.

46. State the amount of damages for which Fleming is vicariously liable as the result of Defendant LUIZ RODRIGUES’s unauthorized use of Mr. Berry’s software?

\_\_\_\_\_

47. Did AL PEREZ use Mr. Berry’s software without his permission?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered “YES” to Question Number 47, then answer Question Number 48. If you answered “NO” to Question Number 47, proceed to Question Number 50.

48. Is Fleming vicariously liable for AL PEREZ ’s unauthorized use of Mr. Berry’s software?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered “YES” to Question Number 48, then answer Question Number 49. If you answered “NO” to Question Number 48, proceed to Question Number 50.

49. State the amount of damages for which Fleming is vicariously liable as the result of AL PEREZ' unauthorized use of Mr. Berry's software?

\_\_\_\_\_

50. Did PATRICK HIRAYAMA Mr. Berry's software without his permission?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered "YES" to Question Number 50, then answer Question Number 51. If you answered "NO" to Question Number 50 you are done. The Jury Foreperson should sign and date this Special Verdict Form and call the Court's Deputy.

51. Is Fleming vicariously liable for AL PEREZ 's unauthorized use of Mr. Berry's software?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered "YES" to Question Number 51, then answer Question Number 52. If you answered "NO" to Question Number 49 you are done. The Jury Foreperson should sign and date this Special Verdict Form and call the Court's Deputy.

52. State the amount of damages that Mr. Berry is entitled to from Fleming based on Fleming's liability for vicarious infringement from PATRICK HIRAYAMA's unauthorized use of Mr. Berry's software?

\_\_\_\_\_

You are done. The Jury Foreperson should sign and date this Special Verdict Form and call the Court's Deputy.

Dated: Honolulu, Hawai'i \_\_\_\_\_.

\_\_\_\_\_  
Jury Foreperson

If Statutory is Elected after Verdict but Before Judgment

Direct Infringement Damages

1. Please state the amount of statutory damages that Mr. Berry is entitled to from Fleming (No less than \$750 but not more than \$30,000).

\$ \_\_\_\_\_

2. Please state the amount of statutory damages that Mr. Berry is entitled to from Mark Dillon (No less than \$750 but not more than \$30,000).

\$ \_\_\_\_\_

3. Please state the amount of statutory damages that Mr. Berry is entitled to from Teresa Noa (No less than \$750 but not more than \$30,000).

\$ \_\_\_\_\_

4. Please state the amount of statutory damages that Mr. Berry is entitled to from Jacqueline Rio (No less than \$750 but not more than \$30,000).

\$ \_\_\_\_\_

5. Please state the amount of statutory damages that Mr. Berry is entitled to from Sonia Purdy (No less than \$750 but not more than \$30,000).

\$ \_\_\_\_\_

6. Please state the amount of statutory damages that Mr. Berry is entitled to from Justin Fukumoto (No less than \$750 but not more than \$30,000).

\$ \_\_\_\_\_

7. Please state the amount of statutory damages that Mr. Berry is entitled

to from Melvin Ponce (No less than \$750 but not more than \$30,000).

\$\_\_\_\_\_

8. Please state the amount of statutory damages that Mr. Berry is entitled to from Alfreda Waiolama (No less than \$750 but not more than \$30,000).

\$\_\_\_\_\_

You are now asked to determine whether Fleming's infringement regarding the Hawaiian Express Defendants' unauthorized use of Mr. Berry's software was "willful" and then determine the amount of damages that Mr. Berry is entitled to from Fleming for its vicarious infringement for allowing the Hawaiian Express Defendants to use Mr. Berry's software without his permission.

9. As to Hawaiian Express Service, Inc., was the Fleming infringement willful?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you checked YES to No. 9 above state the amount of damages Mr. Berry is entitled to from Fleming based on its vicarious infringement of no less than \$750 but up to \$150,000. If you check NO to No. 9 state the amount of damages of no less than \$750 but up to \$30,000.

\$\_\_\_\_\_

10. As to H.E.S. Transportation Services, Inc., was the Fleming infringement willful?

Yes\_\_\_\_\_ No\_\_\_\_\_



If you checked YES to No. 10 above state the amount of damages Mr. Berry is entitled to from Fleming based on its vicarious infringement of no less than \$750 but up to \$150,000. If you check NO to No.10 state the amount of damages of no less than \$750 but up to \$30,000.

\$\_\_\_\_\_

11. As to California Pacific Consolidators, Inc., was the Fleming infringement willful?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you checked YES to No. 11 above state the amount of damages Mr. Berry is entitled to from Fleming based on its vicarious infringement of no less than \$750 but up to \$150,000. If you check NO to No. 11 state the amount of damages of no less than \$750 but up to \$30,000.

12. As to Jeffrey P. Graham, was the Fleming infringement willful?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you checked YES to No. 12 above state the amount of damages Mr. Berry is entitled to from Fleming based on its vicarious infringement of no less than \$750 but up to \$150,000. If you check NO to No.12 state the amount of damages of no less than \$750 but up to \$30,000.

13. As to Peter Schaul, was the Fleming infringement willful?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you checked YES to No. 13 above state the amount of damages Mr.

Berry is entitled to from Fleming based on its vicarious infringement of no less than \$750 but up to \$150,000. If you check NO to No. 13 state the amount of damages of no less than \$750 but up to \$30,000.

14. As to Jessie Gonzales, was the Fleming infringement willful?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you checked YES to No. 14 above state the amount of damages Mr. Berry is entitled to from Fleming based on its vicarious infringement of no less than \$750 but up to \$150,000. If you check NO to No. 14 state the amount of damages of no less than \$750 but up to \$30,000.

15. As to Luiz Rodrigues, was the Fleming infringement willful?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you checked YES to No. 15 above state the amount of damages Mr. Berry is entitled to from Fleming based on its vicarious infringement of no less than \$750 but up to \$150,000. If you check NO to No. 15 state the amount of damages of no less than \$750 but up to \$30,000.

16. As to Al Perez, was the Fleming infringement willful?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you checked YES to No. 16 above state the amount of damages Mr. Berry is entitled to from Fleming based on its vicarious infringement of no less than \$750 but up to \$150,000. If you check NO to No. 16 state the amount of damages of no less than \$750 but up to \$30,000.

17. As to Patrick Hirayama, was the Fleming infringement willful?

Yes\_\_\_\_\_ No\_\_\_\_\_

If you checked YES to No. 17 above state the amount of damages Mr. Berry is entitled to from Fleming based on its vicarious infringement of no less than \$750 but up to \$150,000. If you check NO to No. 17 state the amount of damages of no less than \$750 but up to \$30,000.

You are done. The Jury Foreperson should sign and date this Special Verdict Form and call the Court's Deputy.

Dated: Honolulu, Hawai'i \_\_\_\_\_.

\_\_\_\_\_  
Jury Foreperson

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	Civ. No. CV03 00385 SOM-LEK
	)	(Copyright)
Plaintiff,	)	
	)	<b>CERTIFICATE OF SERVICE</b>
vs.	)	
	)	
HAWAIIAN EXPRESS SERVICE,	)	
INC., a California corporation; et al.	)	
	)	
Defendants.	)	
	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on the dates and by the methods of service noted below, a true and correct copy of Plaintiff Wayne Berry's Proposed Special Verdict Form was served on the following at their last known addresses:

Served Electronically through CM/ECF on January 10, 2006:

Rex Y. Fujichaku rfujichaku@bchlawnet, jennifer@bchlawnet

Lyle S. Hosoda lsh@hosodalawncom

Raina P. Mead rpbn@hosodalawncom

Ann C. Teranishi act@ksglawncom

Thomas H.Y.P. Yee thy@ksglawncom

DATED: Honolulu, Hawai'i, January 10, 2006.

/s/ Timothy J. Hogan  
TIMOTHY J. HOGAN  
Attorney for Plaintiff WAYNE BERRY